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In the Supreme Court of the United States

OCTOBER TERM, 1971

NO.

UNITED STATES OF AMERICA, APPELLANT

v.

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT

OPINION BELOW

The findings of fact and conclusions of law of the district court (App. A, *infra*, pp. 1a–32a) are not officially reported.

JURISDICTION

This is a suit for refund of Federal Insurance Contribution Act (FICA) taxes for the years 1961 and 1963 through 1968, aggregating $103,493.08 plus statutory interest. (App. A, *infra*, pp. 1a–2a.)

The judgment of the district court was entered on June 24, 1971. (App. B, *infra*, p. 33a.) The notice of appeal was filed on July 23, 1971. (App. C, *infra*, p. 34a.) On September 8, 1971, Mr. Justice White

extended the time for docketing the appeal to and including October 21, 1971. The jurisdiction of this Court rests on 28 U.S.C. 1252, which authorizes a direct appeal to this Court from a final judgment of a court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party.[1] A direct appeal lies where a statute is ruled unconstitutional as applied to particular circumstances. *Fleming* v. *Rhodes*, 331 U.S. 100.

QUESTIONS PRESENTED

1. Whether appellee, a nonprofit religious organization, failed to qualify for tax exempt status under the terms of Section 501(c)(3) of the Internal Revenue Code of 1954, because a substantial part of its activities consisted of attempting to influence legislation, and of participating or intervening in political campaigns on behalf of candidates for public office.

2. If so, whether the government is nevertheless barred by the free exercise clause of the First Amendment from applying Section 501(c)(3) to deny tax exempt status to the appellee.

3. Whether the government's revocation of appellee's tax exempt status violated the due process clause of the Fifth Amendment, because the tax exempt status of other organizations which may be similarly situated had not been challenged, or because the government allegedly departed from published admin-

[1] See also 28 U.S.C. 1291 (the courts of appeals have jurisdiction over appeals from final decisions of district courts "except where a direct review may be had in the Supreme Court").

istrative procedures in the steps leading up to the ruling against appellee.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of Section 501 of the Internal Revenue Code of 1954 and of Section 1.501–c(3)–1 of Treasury Regulations on Income Tax (1954 Code) are set forth in Appendix D, *infra*, pp. 35a–40a.

STATEMENT

Appellee Christian Echoes National Ministry, Inc., is a nonprofit religious corporation organized under the laws of Oklahoma in 1951. Dr. Billy James Hargis, its founder and president, is an ordained minister, as are his assistants. They conduct religious services, revivals and rallies on behalf of Christian Echoes. (Findings 3, 6–9, App. A, *infra*, pp. 2a–6a.)

The "Articles of Faith" in Christian Echoes' by-laws declare that "atheistic world forces seek the destruction and overthrow of all the religions of the World * * * [and] the destruction of all free government * * *." Dr. Hargis, whose personal views are those of Christian Echoes, has expressed its mission in terms of a battle against Communism. (Findings 5 and 6, App. A, *infra*, pp. 3a–5a.) The scope and implementation of this mission are reflected in some 1500 documents introduced in evidence by the government, consisting of Christian Echoes' radio scripts and various publications.[2]

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[2] A separately bound exhibit volume, containing pertinent excerpts from many of the government's exhibits, has been lodged with the Clerk of this Court. "E. V." references herein are to this volume.

In a pamphlet published at the inception of the period in issue, Christian Echoes stated that it intended, under the title "Christian Crusade", to (E.V. 160):

> combat militantly and aggressively, and to expose publicly, any person or organization whose words or actions inculcate leftist, socialist or communist philosophies or aims, intentionally or otherwise, into *any* phase of American life.
>
> * * * * *
>
> Christian Crusade is the largest, fastest growing and most active organization in America *solely devoted* to combating Communism.

The same pamphlet stated that "to awaken Americans to their danger" and "to rouse them to action," it was carrying on the following activities: radio broadcasts and television programs; anti-Communist rallies; publication of a monthly anti-communist magazine (Christian Crusade), a weekly intelligence report (Weekly Crusader), a newspaper column, and "hundreds of thousands of pamphlets, leaflets, and broadcast reprints"; an annual convention of its followers; and an annual anti-communist "Leadership School" (E.V. 161). These activities, augmented by others, such as a "Summer Anti-Communist University" for young people and local Christian Crusade chapters, continued throughout the taxable years.

In its battle against Communism during the taxable years, Christian Echoes devoted a substantial part of its efforts to the mass media. During the years 1961 through 1965, it spent considerably more than $200,000 per year on radio and television, and its annual

expenditures for publications and postage ranged from approximately $156,000 to $193,000. (Appellee's information returns, Def. Exs. 274–279.) Expenditures for these purposes constituted 52 percent of its budget during 1966 and 1967. (Christian Crusade Magazine, Def. Ex. 7,)

In its use of communications media during the taxable years, Christian Echoes frequently attempted to influence federal legislation. The following are only a few of many examples. As the district court found, Christian Echoes supported the proposed Becker Amendment to the Constitution, relating to voluntary prayer and Bible reading in public schools. (Finding 11, App. A, *infra*, p. 6a.) In a 1961 issue of the Weekly Crusader, it opposed pending legislation concerning the jurisdiction of the World Court. (E.V. 91.) In a 1962 issue of Christian Crusade, it denounced proposed legislation providing federal aid to education as, in Dr. Hargis' words, "nothing more than a deeply-laid Communist plot to gain control over the minds of American youth through the medium of an all-powerful centralized Federal government which is steadily showing increased velocity toward a Communist regime." (E.V. 96.) In 1964, it opposed repeal of the McCarran-Walter Immigration Act. (E.V. 120.) In a 1965 issue of Christian Crusade, Christian Echoes exhorted its followers to urge their Congressmen to oppose abolition of the House Committee on Un-American Activities and any curtailment of the committee's budget. (E.V. 118.) In radio broadcasts and solicitation letters in 1967 it opposed firearm control legislation (E.V. 100–101).

In a 1967 issue of Christian Crusade, it advised its followers to urge their Senators to oppose ratification of the Outer Space Treaty (E.V. 137–138). Christian Echoes has also taken stands on such varied matters as civil rights legislation, medicare, the Postage Revision Act of 1962, the "Honest Election Law of 1967," the nuclear test ban treaty and the Panama Canal Treaty.

With respect to political campaigns, Christian Echoes has generally stopped short of formally endorsing particular candidates for office, but it has frequently and vigorously attacked specific candidates and incumbents, and urged the election of more conservative candidates. See E.V. 34–38, 65, 71–72, 76, 108–115, 122. These attempts to secure the election or defeat of various political figures reflected Christian Echoes' avowed objective of altering the fundamental political climate in this country through the use of mass media in order to effect a change in the composition of the federal government. As Dr. Hargis declared in 1967 in an issue of Weekly Crusader (Def. Ex. 17):

> But I am advocating that we change the Administration in Washington through the free elective process and I am suggesting that we create a climate in this country that will effect a change through the use of mass communications, such as the Christian Crusade radio broadcasts and publications.

In 1953, upon the application of Dr. Hargis, the Internal Revenue Service had found Christian Echoes qualified as tax exempt under Section 101(6) of the

Internal Revenue Code of 1939, the predecessor of Section 501(c)(3) of the 1954 Code. In 1962 and 1963 at the direction of the national office of the Internal Revenue Service, Christian Echoes' activities and financial affairs were reexamined several times by Revenue agents in the field. The agents recommended no change in Christian Echoes' tax status. However, the national office of the Service, after reviewing Christian Echoes' radio scripts and various publications determined that its tax exempt status should be revoked (App. A, *infra*, pp. 9a–20a). Accordingly, the District Director in Oklahoma sent a letter of proposed revocation to Christian Echoes on November 13, 1964, informing it that its tax exempt status would be revoked for three reasons: (1) it was not operated exclusively for religious purposes; (2) it had engaged in substantial activity aimed at influencing legislation; and (3) it had intervened in political campaigns on behalf of candidates for public office (App. A, *infra*, p. 21a; Pltff's Ex. 24).

Christian Echoes filed a formal protest which, after conferences in the office of the District Director and in the national office, was overruled (App. A, *infra*, pp. 21a–22a). The F.I.C.A. taxes involved were then assessed.[2] After its further protest was heard and overruled, Christian Echoes paid the taxes (App. A, *infra*, pp. 1a–2a, 22a). It then sued for a refund in the United States District Court for the Northern District of Okla-

[2] F.I.C.A. taxes are imposed on employers by Section 3111 of the 1954 Code, but if an organization is tax exempt under Section 501 (a) and (c)(3), Section 3121(b)(8)(B) provides a similar exemption from F.I.C.A. taxes.

homa, claiming that it was entitled to exempt status under Section 501(c)(3) of the Code,[4] which provides that any corporation organized and operated exclusively for religious, charitable, scientific or educational purposes is exempt from taxation unless a substantial part of its activities "is carrying on propaganda, or otherwise attempting, to influence legislation" and unless the corporation "participate[s] in, or intervene[s] in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

After a non-jury trial, the district court found that Christian Echoes had not engaged in attempts to influence legislation, except for its support of the Becker Amendment, and had not endorsed a political candidate or instructed its followers how to vote. The court further found that Christian Echoes' activities with respect to influencing legislation were merely incidental to the exercise of its religion and were insubstantial in relation to the totality of its activities. (Findings 11 and 43, App. A, *infra*, pp. 6a–7a, 25a–26a.)

In its conclusions of law, the court first ruled that Christian Echoes qualified under the requirements and limitations of Section 501(c)(3) of the Code, including the limitation that no substantial part of an organization's activities may be devoted to attempts to influence legislation or to intervene in political campaigns. (Conclusion 2, App. A, *infra*, pp. 28a–29a.) The court also held that where activities are motivated by sincere religious conviction, as here, the First Amendment bars any inquiry or determination by the govern-

[4] See note 3, *supra*.

ment or the courts regarding whether the activities are religious or political and, if political, are substantial, for the purposes of qualification under Section 501(c)(3). (Conclusion 4, App. A, *infra*, pp. 29a–30a.) The court further ruled that in revoking Christian Echoes' tax exempt status the government had applied Section 501(c)(3) in violation of the First Amendment, thereby denying Christian Echoes the free exercise of religion. (Conclusion 7, App. A, *infra*, pp. 30a–31a.)

In addition, the court held that Christian Echoes had been denied due process under the Fifth Amendment because the government had arbitrarily selected it from organizations engaged in similar activities and had violated its own published administrative procedures in the steps leading to revocation. (Conclusions 6 and 8, App. A, *infra*, pp. 30–31a.)

THE QUESTIONS ARE SUBSTANTIAL

On this appeal, the government challenges the district court's rejection of the Internal Revenue Service's second and third grounds for revoking Christian Echoes' tax exemption, that is, that Christian Echoes engaged in substantial activity attempting to influence legislation and that it intervened in political campaigns on behalf of political candidates.[4] The court's decision in this regard raises questions of substantial importance in the administration of federal tax exemptions involving, among other things, Congress' power to withhold tax-exempt status from religious organizations that substantially engage in certain disqualifying political

[4] We do not dispute the court's rejection of the first ground for revocation, that is, that Christian Echoes is not operated exclusively for religious purposes.

activities. Because of the importance, in this constitutionally sensitive area, of applying Section 501(c)(3) and related Code provisions in an even-handed manner to the numerous organizations, religious and otherwise, claiming exemption from taxation pursuant to that Section, plenary consideration of the questions presented by this case is appropriate.

1. Section 501(c)(3) provides in pertinent part that an organization shall be exempt from federal taxation if it is "organized and operated exclusively for religious, charitable, scientific, * * * literary or educational purposes," provided that "no substantial part" of its activities is "carrying on propaganda, or otherwise attempting, to influence legislation," and so long as it "does not participate in, or intervene in" political campaigns. The statutory disqualification for engaging in these kinds of political activity stems from the long-established congressional policy that the Treasury should remain neutral in such political controversies and that no attempt to influence legislation or affect the outcome of political campaigns, whether worthy or unworthy, should be subsidized through tax advantages. As Judge Learned Hand stated in *Slee* v. *Commissioner*, 42 F. 2d 184, 185 (C.A. 2), quoted with approval in *Cammarano* v. *United States*, 358 U.S. 498, 512, "Political agitation as such is outside the statute, however innocent the aim * * *. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them."[6]

[6] In *Slee*, a case disallowing the deductibility of contributions to the American Birth Control League, the statutes in issue (Section 214(a)(11)(B) of the Revenue Act of 1921, c. 136,

In this case the government introduced into evidence hundreds of documents abundantly demonstrating that Christian Echoes' activities centered on the achievement of its goals through the defeat or adoption of pending legislation and the rise or fall of specific political personalities and public officials. Its publications abound with suggestions that its followers urge their legislators to take certain positions regarding various legislation. The publications, and the message inculcated at "Leadership Schools" and rallies, also reflect efforts to induce political action at the local level through the medium of Christian Crusade chapters. Christian Echoes' pamphlets, designed for wide distribution, were concerned with a host of legislative matters, from medicare to the outer space treaty. Its political campaign activity, albeit indirect, was nevertheless pervasive, for instead of specifically endorsing candidates for office, Christian Echoes did the practical equivalent by vigorously opposing specific candidates who did not adhere to its "Articles of Faith."

In view of this substantial evidence, the government concluded that Christian Echoes was not entitled to

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42 Stat. 227, and Sections 214(a)(10) of the Revenue Act of 1924, c. 234, 43 Stat. 253, and of the Revenue Act of 1926, c. 27, 44 Stat. 9) included no specific provisions denying deductions for contributions to organizations substantially engaged in attempting to influence legislation. The express provisions relating to legislation originated with the Revenue Act of 1934, c. 277, 48 Stat. 680, Secs. 23(*o*)(2) and 101(6), and have been incorporated in all subsequent Code provisions involving deductibility of charitable contributions and qualifications for tax-exempt status. The provision concerning political campaigns was added to Section 501(c)(3) upon enactment of the Internal Revenue Code of 1954. See 100 Cong. Rec. 9604.

tax exempt status under Section 501(c)(3) because it had engaged in substantial activity aimed at influencing legislation and had intervened in political campaigns. The district court rejected the government's conclusion, but the basis for the court's decision is far from clear.

On the one hand, the court found that Christian Echoes' activities were not of the type specified in Section 501(c)(3) because "these activities [regarding influencing legislation] have resulted from [its] religious beliefs and were merely incidental to the exercise of its religion * * *"; the court also found that "any such activities by [Christian Echoes] were insubstantial * * *" (App. A, *infra*, p. 25a). The court reiterated this finding in its conclusions of law (*id.* at 28a). But the court went further by holding that since Christian Echoes' activities are "motivated by the sincere religious convictions of [its] followers," neither the government nor the court "may inquire into such activities and work product of plaintiff for the purpose of determining whether those activities claimed by plaintiff to be religious are religious or political and, if political, whether substantial, for the purpose of denying tax exempt status to plaintiff" because the First Amendment "clearly forbids civil courts from playing such a role" (*id.* at 29a–30a).[7] The court further

[7] It is difficult to square the court's statements in this regard with its earlier finding that Christian Echoes' activities regarding influencing legislation were "insubstantial" (App. A, *infra*, p. 25a). While the court may have been addressing itself to the government's contention that Christian Echoes was not operated exclusively for religious purposes as required by Section 501(c)(3)—a contention we do not raise on this appeal (see p. 9,

held that the government, in applying Section 501(c)(3) to deny Christian Echoes' tax-exempt status, "without evidence to support its action and without constitutionally justifiable cause, in violation of the First Amendment to the Constitution of the United States, has denied the free exercise of religion to, and discriminated against, plaintiff" (*id.* at 30–31a).

It is the government's position that Christian Echoes' activities, described above, disqualified it from tax exemption under Section 501(c)(3), that the government properly interpreted that Section in revoking Christian Echoes' exemption on this basis, and that contrary to the decision of the district court, Section 501(c)(3) as thus applied does not contravene the First Amendment.

There is no doubt that the inclusion of religious organizations among those exempted from federal taxation by Section 501 is itself constitutional. *Walz* v. *Tax Commission,* 397 U.S. 664, 676. It is likewise settled that engaging in religious activities does not, *ipso facto,* confer immunity from all financial burdens of government, including taxes. *Follett* v. *McCormick,* 321 U.S. 573, 578; *Murdock* v. *Pennsylvania,* 319 U.S. 105, 112. As this Court observed in *Walz,* 397 U.S. at 673, qualifications for tax exemption accorded by broadly drafted statutes such as Section 501(c)(3) are not "perpetual or immutable; some tax-exempt groups

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supra)—its language is not so confined and certainly seems broad enough to foreclose governmental and judicial inquiry into whether a religious organization is engaged in substantial activity aimed at influencing legislation, which would otherwise disqualify it from tax exemption under the statute.

lose that status when their activities take them outside the classification and new entities can come into being and qualify for exemption." Since tax exemptions are matters of legislative grace, all taxpayers, including Christian Echoes, have the burden of clearly establishing their right to tax-exempt status. *Dickinson* v. *United States*, 346 U.S. 389, 395; *Founding Church of Scientology* v. *United States*, 412 F. 2d 1197 (Ct. Cl.), certiorari denied, 397 U.S. 1009. In this case, Christian Echoes failed to meet that burden.

The government's revocation of Christian Echoes' exemption on the ground that it engaged in the disqualifying political activities specified in Section 501 (c)(3) did not contravene the standards of neutrality this Court has adopted to determine whether particular legislation violates the First Amendment's religion clauses. See, *e.g.*, *Welsh* v. *United States*, 398 U.S. 333; *United States* v. *Seeger*, 380 U.S. 163; cf. *Zorach* v. *Clauson*, 343 U.S. 306, 314. The provisions relating to political activity contained in Section 501 (c)(3) do not bar only particular types of religions from tax exemption. Nor do they jeopardize First Amendment values by requiring administrators and courts to resolve underlying controversies over religious dogma (cf. *Presbyterian Church* v. *Hull Church*, 393 U.S. 440) or make judgments about the verity of particular religious beliefs (cf. *United States* v. *Ballard*, 322 U.S. 78).[8] Whether these activities of Chris-

[8] Disqualifying a religious organization from tax-exempt status because of its political activities may "involve" government with religion in the sense that the revenue authorities must evaluate the scope of political pursuits in proportion to

tian Echoes were, in its own realm of belief, "religious" or of educational value to its members is immaterial under Section 501(c)(3). An organization operated exclusively for religious purposes that engages in substantial activity aimed at influencing legislation or intervenes in political campaigns is disqualified from tax exemption, whatever the motivation or reason for its engaging in such activity.*

Section 501(c)(3) thus reflects Congress' "long-established policy of not picking and choosing among religious beliefs," *United States* v. *Seeger, supra*, 380 U.S. at 165. Like the New York statute considered in *Walz*, this exemption from taxation is a recognition of the benefit the public derives from activities of

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the totality of a group's activities. That such an evaluation may be difficult, however, "does not render it undue interference with religion * * * for it does not entail judicial inquiry into dogma and belief." *Walz* v. *Tax Commission*, 397 U.S. at 698 n. 1 (concurring opinion of Mr. Justice Harlan); see also *Parker* v. *Commissioner*, 365 F. 2d 792, 795 (C.A. 8).

Moreover, the fact that Section 501(c)(3) denies exempt status only to organizations which devote a "substantial" part of their activities to propagandizing or influencing legislation does not offend the First Amendment. Only last Term, this Court upheld the constitutionality under the First Amendment of federal grants to schools not "used or to be used *primarily* in connection with any part of the program of a school * * * of divinity." *Tilton* v. *Richardson*, 403 U.S. 672, 675 (emphasis added).

*In this light, the facts here are similar to those presented in cases denying tax-exempt status under Section 501(c)(3) to the League of Women Voters, which, notwithstanding its exclusively "educational" objectives and operations, failed to satisfy the test for exemption because a substantial portion of its activities consisted of attempting to influence legislation. *Kuper* v. *Commissioner*, 332 F. 2d 562 (C.A. 3), certiorari denied, 379 U.S. 920; *League of Women Voters* v. *United States*, 180 F. Supp. 379 (Ct. Cl.), certiorari denied, 364 U.S. 822.

religious, charitable and educational organizations (see *Trinidad* v. *Sagrada Orden,* 263 U.S. 578, 581; *Washington Ethical Society* v. *District of Columbia,* 249 F. 2d 127, 129 (C.A.D.C.)). But the exemption is denied to those otherwise eligible entities whose common denominator is their pursuit of activities devoted to promoting or defeating legislation or intervention in political campaigns. The political limitations clauses of Section 501(c)(3) represent an expression of a "sharply defined national policy," insuring that the Treasury stands aside from political controversies. *Cammarano* v. *United States,* 358 U.S. 498, 508, 512.[10] All legislation is treated alike, regardless of political party or pressure group; no particular kind of legislation or political party is singled out as good or bad, innocuous or dangerous, orthodox or radical. Cf. *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367. Indeed, the statute does no more than ensure that, like private citizens or other groups, organizations which would otherwise be tax exempt shall not look to the Treasury to recoup the cost of influencing legislation or intervening in political campaigns. And in preserving the neutrality of the Treasury in political matters Section 501(c)(3) is likewise neutral with respect to religion because it does not discriminate on the basis of affiliation or belief. See *Gillette* v. *United States,* 401 U.S. 437, 450–454.

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[10] The prohibitions considered in *Cammarano* were contained in Treasury Regulation 111, Section 29.23(q)–1 (1939 Code), interpreting the predecessor of Section 162 of the Internal Revenue Code of 1954.

Moreover, the application of Section 501(c)(3) in this case did not, as the district court held (App. A, *infra*, pp. 30a–31a), inhibit the free exercise of Christian Echoes' religion. Christian Echoes has not demonstrated any coercive effect of the denial of a tax exemption, and it is well-settled that the Free Exercise Clause may be invoked only where there is some coercion in the practice or exercise of religion. *Board of Education* v. *Allen*, 392 U.S. 236, 248–249; *Abington School Dist.* v. *Schempp*, 374 U.S. 203, 222–223. While the freedom to *hold* religious beliefs and opinions is absolute (*Cantwell* v. *Connecticut*, 310 U.S. 296, 303), and the Free Exercise Clause bars "governmental regulation of religious beliefs as such" (*Sherbert* v. *Verner*, 374 U.S. 398, 402), or interference with the dissemination of religious ideas (*Murdock* v. *Pennsylvania*, *supra*), it does not render unlawful legislation that, for neutral purposes, imposes only an indirect burden on the exercise of religion (*Braunfeld* v. *Brown*, 366 U.S. 599, 606 (opinion of Mr. Chief Justice Warren)).

In sum, the political limitations in Section 501(c)(3) are constitutionally valid and the district court erred in holding that the First Amendment precluded their application by the government in determining whether Christian Echoes qualified as tax exempt. Also, to the extent that the district court's decision rests on its view that Christian Echoes' activities aimed at influencing legislation were insubstantial, the court similarly erred. As set forth above, the record contains substantial evidence that during the taxable years Christian Echoes devoted significant portions of its activities to attempts to influence legis-

lation, by propaganda and otherwise, and also intervened in political campaigns. These were precisely the kind of efforts that *Cammarano* v. *United States, supra*, 358 U.S. 498, 504–505, held could not be subsidized by tax advantages in a related context. Section 501(c)(3)'s disqualification for attempting to influence legislation is not limited to direct dealings with legislators, as the district court seemed to imply (App. A, *Infra*, p. 7a). By apparently taking this narrow view of what activities are included within Section 501(c)(3), the court below viewed Christian Echoes' disqualifying activities as "insubstantial" (App. A, *infra*, p. 26a). But legislation can be promoted or defeated by publicity campaigns directed at the public, as well as by lobbying efforts; indeed this Court so held in *Cammarano* v. *United States, supra*, 358 U.S. at 504–507. Thus, Christian Echoes failed to qualify for tax exemption under Section 501(c)(3) because it violated the limitations on political activity contained in that provision. The district court's holding to the contrary will impair the government's enforcement of the political limitation clauses of Section 501(c)(3) and casts serious doubt on the power of Congress to withhold tax exemptions from religious organizations that engage in political activities.

2. The additional ground for the decision below—that in revoking appellee's exemption the government "consciously and arbitrarily" selected appellee from other tax exempt organizations engaged in similar activities and that this "discrimination and unequal treatment" resulted in a violation of the due process clause of the Fifth Amendment (App. A, *infra*,

pp. 27a, 30a)—is also erroneous. This Court has repeatedly held that in a tax refund suit, the only permissible basis for recovery is that there has been an overpayment of tax. *Lewis* v. *Reynolds*, 284 U.S. 281, 283; *United States* v. *Anderson*, 269 U.S. 422. If Christian Echoes is unable to show that it meets the criteria for exempt status under Section 501(c)(3), there has been no overpayment of taxes and it cannot recover. Why or in what manner taxes are collected is irrelevant to whether a refund should be allowed.

Moreover, the fact that the Commissioner has not challenged the tax exempt status of each and every organization that may be similarly situated to appellee does not amount to a denial of due process. Equality of treatment for all taxpayers is, of course, a cardinal administrative goal. But simultaneous audits and deficiency determinations that would cast a net wide enough to cover all taxpayers similarly situated in a given respect cannot practicably be accomplished. It is necessary to evolve tax law through test cases, which inevitably involves the singling out of particular taxpayers. That kind of discrimination is necessary if there is ever to be a first case, and if an individual taxpayer's liability is to be determined on its own merits under the revenue laws. In order to show discrimination on the part of the Internal Revenue Service amounting to a denial of due process, a taxpayer must at the least show discrimination based upon differences of race, religion, politics or some other constitutionally unacceptable classification. Compare *Oyler* v. *Boles*, 368 U.S. 448, 456; *Bolling* v. *Sharpe*, 347 U.S. 497, 500; *Yick Wo* v. *Hopkins*, 118

U.S. 356. No such discrimination is asserted or appears of record in this case.

The court also held that the Service's departures from its published administrative procedures constituted a denial of due process (App. A, *infra*, p. 31a). But there has been no showing that Christian Echoes was prejudiced in any way by deviations from usual procedures. The fact that the decision to revoke appellee's tax exempt status was made by the National Office of the Service, rather than the District Director, did not diminish its remedies. Christian Echoes was afforded a full opportunity at the administrative level to demonstrate, through its protests and four conferences with Service officials, that it qualified for tax exempt status. Thereafter, it had its full day in court, in no way inhibited from going forward with its proof by the manner in which the controversy had come up through administrative channels.[11]

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[11] The district court found in addition (Finding 40, App. A, *infra* p. 25a) that: "The nature of plaintiff's activities during the years involved in this suit, although those activities have been expanded by plaintiff's growth, is identical with the activities of plaintiff during the years preceding the issuance of the exemption letter." This seems to imply a view on the part of the court that the Service, once having ruled that a taxpayer is tax exempt, may not revoke the ruling so long as the taxpayer's activities continue unchanged. Although we do not understand this view to be a ground of decision since it is not mentioned in the conclusions of law, the government challenges any such conception.

CONCLUSION

The questions presented by this appeal are substantial. Probable jurisdiction should be noted.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

FRED B. UGAST,
Acting Assistant Attorney General.

A. RAYMOND RANDOLPH, JR.,
Assistant to the Solicitor General.

GRANT W. WIPRUD,
STEPHEN SCHWARZ,
Attorneys.

OCTOBER 1971.

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APPENDIX A

In the United States District Court
Northern District of Oklahoma

No. 67–C–114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC., A RELIGIOUS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Filed: June 24, 1971

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From the pleadings (including the Pre-Trial Order and Amendments), depositions, answers to interrogatories on file, interrogation of counsel, the evidence introduced during the trial of this case, the Report of the Special Master appointed herein to review the exhibits and to report to the Court, and the Court having independently reviewed the exhibits and Report, the Court makes the following material Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Court finds this is an action brought by plaintiff, Christian Echoes National Ministry, Inc., against defendant, United States of America, for recovery of Federal Insurance Contribution Act (FICA) taxes assessed and collected from plaintiff by defendant for the years 1961, 1963, 1964, 1965, 1966, 1967 and 1968. Plaintiff has paid, pursuant to retro-

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active asssesments for periods prior to September 22, 1966, and pursuant to timely filed Employer's Quarterly Tax Returns, Form 941, subsequent to that date, FICA taxes for the periods indicated:

1961—All quarters	$10,972.53
1963—All quarters	10,038.71
1964—All quarters	10,483.11
1965—All quarters	13,618.18
1966—Quarter ending March 31	5,728.52
Quarter ending June 30	5,022.34
September 22 through September 30	354.30
Quarter ending September 30	5,828.31
Quarter ending December 31	4,351.61
1967—Quarter ending March 31	4,770.59
Quarter ending June 30	3,781.48
Quarter ending September 30	4,238.99
Quarter ending December 31	4,341.13
1968—Quarter ending March 31	5,150.73
Quarter ending June 30	4,546.72
Quarter ending September 30	6,086.48
Quarter ending December 31	4,179.35

The total amount of plaintiff's claim is $103,493.08 plus statutory interest. Claims for refund of taxes have been timely filed and disallowed or more than six months have elapsed between the respective dates of filing claims and the date of filing plaintiff's Third Amended Complaint.

2. Plaintiff is the sole owner of the claims for refund pertaining to the above taxes.

3. Plaintiff, Christian Echoes National Ministry, Inc., with headquarters in the City of Tulsa, Oklahoma, is a corporation duly organized under Oklahoma laws authorizing organization of nonprofit corporations for religious and educational purposes, specifically 18 Okla. Stat. §§ 541–575. A Certificate of Incorporation was issued by the State of Oklahoma to Christian Echoes Ministry, Inc., on April 2, 1951.

An Amended Certificate of Incorporation was issued to Christian Echoes National Ministry, Inc., formerly Christian Echoes Ministry, Inc., on September 5, 1952

4. The Amended Articles of Incorporation (P. Ex. 1), among other provisions, contain the following:

> "The purposes for which this corporation is formed are to promote the Articles of Faith set forth in the *Bylaws* by establishing and maintaining weekly religious radio and television broadcasts, a national religious magazine and other religious publications, religious educational institutions, evangelistic campaigns, and meetings for the promotion of the social and spiritual welfare of the community, state and nation. * * *"

5. Plaintiff is controlled and managed by a board of trustees and corporate officers. It has adopted formal corporate Bylaws and Articles of Faith (P. Ex. 1) reciting, among other things:

> "ARTICLE III
>
> "ARTICLES OF FAITH OF CHRISTIAN ECHOES NATIONAL MINISTRY
>
> "We believe in God, Supreme and Eternal, and in Jesus Christ as His Son, perfect Deity, and in the Holy Comforter and Challenger of this age, The Holy Ghost, and in the Bible as the inspired Word of God.
>
> "We believe that the solution of the World's problems, economic, political and spiritual, is found by the application of Christian Teachings in the lives of men and nations rather than in political ideologies of any kind.

"We believe in the Twentieth Century Reformation to combat apostate conditions with the Church.

"We realize atheistic world forces seek the destruction and overthrow of all the religions of the World, including particularly that founded upon the teachings of Jesus Christ. The same forces seek also the destruction of all free governments, in which the lives and property of the people are protected by civil, moral and spiritual law.

"We associate ourselves together to educate and proclaim the essential truths of Christianity, and the doctrine: Jesus Christ is the Hope of the World and America is God's Greatest Nation under the Living Son.

"We believe in the real spiritual unity in Christ of all redeemed by his precious blood.

"We believe in constitutional government, whereby religious as well as other freedoms of mankind are preserved and protected.

"We believe in the fundamentals of New Testament Christianity, and we propose to promulgate the eternal truths thereof at all costs."

The preachings and teachings of the organization have been addressed to that theology continually and uninterruptedly since the date of incorporation.

6. Plaintiff's founder and president is the Rev. Dr. Billy James Hargis, an ordained minister of the Gospel of Jesus Christ. Dr. Hargis is authorized and does perform all sacerdotal functions on behalf of plaintiff. His training and experience qualify him as an expert witness in the areas of religion and his expert opinions concerning religion are admissible in evidence. Dr. Hargis' personal views are those of the corporation. Plaintiff's purposes as expressed by Dr. Hargis' testimony (Tr. 84, 85) during the trial were as follows:

"Because I became concerned over the fact that Communism was the most effective opponent that the Church of Jesus Christ ever had, and if Communists took over the United States this would destroy freedom of worship, religious exercises, it would be the end of missionary activities, Christian colleges, Christian benevolent organizations. I saw in Communism a more formidable opponent than anything the church faced. Also I have always been a student of Bible prophecy and from my study of the Old and New Testament I am aware of the fact that there is to be a despotic world government in which the freedom of religion is eradicated and there shall be a world church which denies the historic Christian faith. I was familiar with the Bible prophecy, this has always been a special study of mine, and I could see in Communism and its demands for Communist world government, and I could see in Communism this demand for an amalgamated world religion that was subservient, the fulfillment of divine prophecy a world church, a world government that would serve Satan instead of God, so I began to write on the prophetic. My interest in the fight against Communism first started from the articles and sermons I wrote on prophecy. * * *"

7. Rev. David Noebel, a member of plaintiff's headquarters staff, is an ordained minister of the Gospel of Jesus Christ. He is authorized and does perform all sacerdotal functions on behalf of plaintiff. Other ordained ministers on plaintiff's staff perform like functions.

8. During the years in litigation plaintiff, through its representatives, has conducted religious revivals extending through a weekend or a full week and rallies which are one-night religious meetings. These are held in various churches throughout the United States,

sponsored and supported by various local churches, church congregations and pastors. Where local church space is inadequate, these meetings are held in public halls.

9. Plaintiff does not contact or make arrangements with political organizations to conduct a revival or rally. These are consistently arranged through clergymen in local churches in various cities. No rallies or revivals have been sponsored by or in the name of any political organization nor have they been sponsored by any candidate for public office nor has a rally been conducted in support of any particular legislation. Plaintiff's people work with the religious, and not the political community. Dr. Hargis ordinarily speaks about twenty days out of thirty away from Tulsa, mostly in churches. During those twenty days away he may speak two or three times a day. He preaches approximately one thousand sermons each year. Staff pastors travel widely in proclaiming the gospel espoused by plaintiff's followers. From the time of the formation of plaintiff, the organization each week has, through Dr. Hargis or staff pastors, conducted Sunday worship services in Tulsa.

10. In addition to plaintiff's activities conducting revivals, rallies, Sunday worship services and other functions usually performed by a local church of the Christian gospel, plaintiff conducts an annual convention of its followers, an annual leadership school, summer sessions for young people, publishes two magazines, and delivers daily and weekly radio broadcasts.

11. With the exception of support of the proposed Becker Amendment to the United States Constitution relating to voluntary prayer and Bible reading in public schools, plaintiff has not engaged in attempts

to influence legislation. Plaintiff does not lobby in Washington, has not endorsed a political candidate, and has not instructed its followers as to how to vote but only to vote. Plaintiff has never received compensation of any nature for the support of any political candidate or legislation. No member of plaintiff has ever testified before a congressional committee, a legislative committee, a council, or any form of local, city, county, or state government.

12. Plaintiff's activities are directed toward the dissemination of biblical concepts of the Christian faith as stated in the Articles of Faith of plaintiff and according to the belief and understanding of the Bible by its adherents. Plaintiff's battle against Communism, Socialism, and Political Liberalism, as those terms are defined by the organization, is based upon the belief that Communism, Socialism and Political Liberalism make direct attacks against the Christian faith espoused by the supporters of plaintiff and the Church as they conceive it to be ordained of God. Plaintiff's activities have been directed toward achieving its religious goals.

13. Plaintiff's organization and structure, its practices, precepts, and activities provide all the necessary elements of a "church" in the ordinary acceptance of the term and as used in the Internal Revenue Code of 1954, its amendments and applicable regulations. Plaintiff's followers together with its ordained pastors clearly constitute a congregation the same as any local church.

14. On May 22, 1952, plaintiff filed an application (P. Ex. 1) dated March 28, 1952, for income tax exemption under § 101(6) of the 1939 Internal Revenue Code, now § 501(c)(3) of the Internal Revenue Code of 1954. The application stated the specific purposes for which the organization was formed were:

> "Religious non-profit organization. Organization maintains weekly religious radio broadcasts, religious publications, religious educational institutions. Engages in religious and evangelistic work in general."

Question No. 10 recited: "State all the activities in which the organization is presently engaged." Plaintiff stated:

> "Weekly religious broadcast, Monthly Religious magazine, Religious Books and Pamphlets, Religious Summer Camp, Church Revivals, Establishing Church College."

These answers followed generally the stated purposes of plaintiff in its written Articles of Incorporation.

The application required plaintiff to attach a copy of its Articles of Incorporation, Bylaws, and other corporate documents setting forth the aims and purposes of the organization. Representative samples of copies of magazines, pamphlets, and radio sermons published by plaintiff during the previous two years were also submitted to the Internal Revenue Service.

Plaintiff attached a complete statement of its financial receipts and expenditures from the beginning of its activities—some one and a half years of operation. Plaintiff also furnished an affidavit by Dr. Hargis consisting of four and one-half legal size pages describing in detail the nature and scope of the activities of plaintiff from the time its operations began.

15. One of plaintiff's publications, "Communism Exposed," an exhibit attached to the exemption application, was attached for the purpose of informing the IRS of the basic religious tenets and the nature and scope of the anti-Communist program of Christian Echoes National Ministry, Inc.

16. The IRS was supplied the complete text of Dr. Hargis' sermon entitled "They Cast Four Anchors Out of the Stern." The sermon urges that in order to

save the country four anchors were needed: patriotism, gratitude, faith, and answered prayer. This document, additionally, revealed the nature of plaintiff's work product.

17. On March 12, 1953, on the basis of the application for tax exempt status, the Internal Revenue Service issued to plaintiff its letter of exemption stating that plaintiff was:

> "[O]rganized and operated exclusively for religious and education purposes [and] exempt from Federal income tax and qualified for charitable contributions under the provisions of sections 101(6) and 23 (o) and (q) of the 1939 Internal Revenue Code." (P. Ex. 24; See also Pre-Trial Order ¶ III (f), (g), 10–1–69.)

The Internal Revenue Service issued to plaintiff its tax exemption letter based upon findings of facts from investigations by the Internal Revenue Service that plaintiff at the time of issuance of the letter of exemption was both organized and operated exclusively for religious and educational purposes, and had been so operating nearly two years. Radio scripts, sermons, magazines, pamphlets and other publications together with plaintiff's financial reports, were examined by the National Office of the Internal Revenue Service in Washington prior to its issuing the exemption letter.

18. In April, 1962, the National Office of the Internal Revenue Service ordered an extensive examination of plaintiff's activities, with emphasis at that time on its financial affairs. Revenue Agent John S. Donovan, of the Tulsa office, was dispatched to investigate plaintiff. Agent Donovan spent 92 hours reviewing the 1959, 1960, and 1961 operations. He prepared a "No Change Report" on IRS Form 886–A (P. Ex. 5). In his handwritten report Agent Donovan, after discussing his examination, wrote:

> "From available information it appears that operations are for all practical purposes the same as when the exemption was granted to the organization. Information submitted with the application has been compared with that submitted with letter and except for volume there is the same basic purpose."

19. A few weeks later, Agent Donovan was directed to re-examine plaintiff. As a result of his second examination, on November 27, 1962, he again filed a "No Change Report," this time IRS Form 1904 (P. Ex. 6), covering the same operating years—1959, 1960, and 1961. In his re-examination Agent Donovan spent an additional 151 hours, and stated:

> "Investigation extended over a period of several months and it appears that present operations are basically the same as when the exemption was granted by the National Office March 12, 1953. In view of the foregoing no change is recommended in the exempt status of Christian Echoes National Ministry, Inc. at this time."

20. The National Office of the Internal Revenue Service in Washington, D.C., returned the case file to its Tulsa office for further audit on May 7, 1963 (P. Ex. 7 and 8), stating "additional facts needs to be secured and questions answered."

21. This time Agent John Donovan and Agent Harry E. Riggs were sent into the field to make a further examination of plaintiff's financial affairs and other activities. A joint report, dated July 15, 1963 (P. Ex. 9), signed by both revenue agents, stated in part:

> "After due consideration of the information submitted, the National Office granted Christian Echoes National Ministry, Inc., an exemption

letter under the provisions of Section 101(6) of the I.R.C. of 1939, as it was shown that the corporation was organized and operated exclusively for religious and educational purposes. * * *

"The organization has maintained the purposes as set forth above during the years under review.

"The organization has been operated exclusively for the teaching of faith in God and educating and informing the public on the dangers of Communism and Socialism. * * *

"In operation tests, it is concluded that the Christian Echoes Ministry, operating as 'Christian Crusade' is entitled to exempt organization status as an educational organization. * * *"

22. Following the July 15, 1963, joint report which for the third consecutive time declared plaintiff to be operating within its exemption, Mr. Albert F. Schrempp, Chief of the Audit Division in the IRS District Office in Oklahoma City, on September 16, 1963, wrote a "memorandum for the file" (P. Ex. 10) in which he stated:

"Larry Stewart called today from the Regional [Dallas] Office and stated that he has received a letter from the National Office indicating that there's even more particular interest in this case than has previously been evidence—they [the National Office] are asking for copies of specific publications of Hargis and other information.

"I told him we had suspended any further action on the case and would continue to suspend it until we received the National Office letter he is sending to us. He asked that we suspend action even beyond that point—until we hear from him as to the line of approach the National Office wants us to take in examining this organization."

23. On September 18, 1963, Mr. Schrempp wrote another memorandum (P. Ex. 11) to the file, stating:

> "Larry Stewart called again this morning about this examination. He wanted to talk to me in general and get a little background about what approach we have used in our examination thus far—whether Hargis has cooperated or dragged his feet, etc. I gave him some additional information out of the file, including the National Office April 1962 request which was the immediate trigger for the examination. I also called his attention to Dan Cross' June 1962 memorandum in which he indicated that the National Office was particularly interested in this case from the political action standpoint.
>
> "Larry ended up stating that they will get the National Office letter he previously referred to, up to us without delay, but we should not go ahead with the examination until we have heard further from Larry, probably by telephone, as to the method of approach we should take from here on out in the examination. He also stated that after we reinstitute the examination, we should definitely not close it out without first allowing the National Office, as well as the Regional Office, to take a look at the file."

24. On September 30, 1963, Mr. Schrempp wrote another memorandum (P. Ex. 12), wherein he stated:

> "Larry Stewart, the ARC-Audit, called me again today about this case. He stated that he had talked to the National Office last week and had determined that we could go ahead with the examination and with the securing of the information which the National Office asked us to obtain.
>
> "Larry stated that we did not need to take any particular approach in obtaining the information from the organization. If they ask

about it we can let them know that although the Internal Revenue Service does not have a 'drive' going on exempt organizations, we are in the process of making more examinations of this type organization throughout the country. Should they ask, we may also let them know that the examinations are not being limited to the financial operations but also are going into the types of activities which the organizations are conducting. We can also tell them that the information and documents which we are asking for will be sent on in to the National Office and that we won't close the case until the National Office has had an opportunity to study these documents. Although we don't know how long the National Office may take, it could be two or three months before they have completed any study they make of what we submit to them.

"Larry also stated that it wouldn't be necessary for us to obtain the information for a period extending over three or four years. If we can get complete information involving the last financial year which we are examining, this should be sufficient to furnish the National Office.

"I am instructing the Chief, Review to have Frank Michael send the case back to Tulsa for the necessary action to obtain the materials and information desired by the National Office—and also for whatever purpose Michael was preparing to send the case back when this current request from the National Office was received. In sending it back, we should ask the agent to give first priority to obtaining the documents and information which the National Office wants and get it on the way in to them before he goes into the continuation of his examination."

25. Following specific administrative directives from the National Office, Agent Riggs next performed the

additional and separate duty of securing all of plaintiff's publications, including sermons, magazines, pamphlets, books, and other material. On October 29, 1963, Agent Riggs forwarded these documents with a written transmittal "memorandum" (P. Ex. 14) on U.S. Government Optional Form No. 10, to the Chief, Audit Division in the Oklahoma City District Office (P. Ex. 15), stating he "estimated that the balance of information can be forwarded on or before November 6, 1963." This memorandum was sent to the Assistant Commissioner (Compliance) in the National Office of the IRS on October 30, 1963 (P. Ex. 15).

26. On October 29, 1963, the Oklahoma City District Office wrote to its Regional Office (P. Ex. 17):

> "Christian Echoes Ministry is under active examination. Most of publications requested by the National Office have been secured and will be forwarded direct to National Office tomorrow.
>
> "Estimate that remainder of publications and information requested will be available within two weeks."

27. On November 6, 1963, Agent Riggs filed a "memorandum" (P. Ex. 15), including 35 pages of exhibits showing the names of all of the publications of plaintiff, the radio stations over which sermons of plaintiff have been preached, the amount of money paid by plaintiff to each radio station, and all financial records of plaintiff for the years 1959, 1960, 1961, and 1962. After this re-investigation of several months' duration, Agent Riggs reported (P. Ex. 15) in this memorandum:

> "There were no radio speeches found where a listener was urged to vote for a certain candidate or where certain legislation was advocated."

The November 6, 1963, memorandum and enclosures were forwarded to the National Office on November 15, 1963 (P. Ex. 15):

28. On November 18, 1963, the Oklahoma City District Office wrote to its Tulsa office (P. Ex. 16):

> "Investigation of Political Activities of Certain Section 501(c)(3) Organizations.
>
> "The publications and information submitted by Agent Riggs have been forwarded to the National Office.
>
> "I am returning your sensitive case report on this case and suggest that it be rewritten to show that all of the information requested by the National Office has been secured and forwarded to Washington and that the agent will proceed with the examination. Upon completion of the examination, our findings will not be discussed with the taxpayer. On the contrary, the case will be referred to the National Office under technical advice procedure in accordance with the Assistant Commissioner's instructions.
>
> "Instructions to complete the case and submit it to the National Office under the technical advice procedure will be found in the second full paragraph on Page 2 of the memorandum from the Assistant Commissioner (Compliance). A copy of this memorandum should be in the case file which Agent Riggs has.
>
> "If Agent Riggs cannot complete his examination and submit the case to Review by December 15, I would like a status report on the progress made. /s/ Roy Wade, Jr."

29. On November 27, 1963 three weeks after submitting his specially requested reports of October 29 and November 6, 1963, Agent Riggs made his final report (P. Ex. 18) concerning this plaintiff's operations, with this conclusion:

"All of the activities [of plaintiff] have been confined to the teaching against Communism and for a belief in God. Information in television, radio broadcasts, publications and lectures all contain the main theme of Anti-Communism. There are a number of sermons broadcast on the radio and the publications contain religious articles. . . .

"As far as can be determined the organization operates within the exemption letter as a religious and educational organization. It continues to operate under the purposes set forth in its application as noted in the second paragraph of this memorandum. No statements were found in publications, radio and television scripts or books that advocated the election of a particular candidate or the passage of legislation."

30. On December 11, 1963, the District Office in Oklahoma City returned plaintiff's exemption application file to the National Office under cover letter of Mr. Schrempp, the letter carrying a personal notation (P. Ex. 19):

"Note for the record: Gunod called me December 11, 1963, and said they needed exempt application files for the Rulings Division. They seldom send them out, but did in this case last year when they started on the 'philosophical-political' approach. I told them we would send it along immediately and as soon as we finished looking over the agent's current report in review [report dated November 27, 1963]. We'll send the current exam file."

31. On December 20, 1963, the Oklahoma City District Director's Office of the IRS sent the following letter to the National Office (P. Ex. 20):

"The examination of Christian Echoes Ministry, Inc. has been completed and the administrative file is forwarded herewith for association and review with the publications and information submitted on October 30, 1963 and November 15, 1963.

"Technical advice is requested concerning the status of this organization under the provisions of Revenue Procedure 62–29, I.R.B. 1962–47, 18, in accordance with the memorandum from the Assistant Commissioner (Compliance) dated September 5, 1963.

"Consent, Form 872, covering annual information return Form 990–A, for the year ending December 31, 1960 has been solicited and the original will be forwarded for association with the return as soon as we receive it."

32. The National Office directed the District Office in Oklahoma City to make a request for "technical advice" to the National Office under the provisions of Revenue Procedure 62–29 I.R.B. 1962–47, 18. The Assistant Commissioner (Compliance) in the Washington Office thereupon issued a memorandum dated September 5, 1963, to the District Office in Oklahoma City as to how to proceed since the investigation had reached a dead-end through the final reports of Agents Donovan and Riggs. The National Office itself issued directives that the Oklahoma City District Office make the formal request.

33. On November 6, 1964, Mr. Singleton Wolfe, Assistant Commissioner (Compliance) in the National Office, placed a long distance conference telephone call to the administrative head of the Regional Office of the IRS in Dallas, the District Director of the IRS at Oklahoma City, and certain staff members in each office. Among other exhibits introduced by plaintiff

is a copy of a written memorandum of the conference call (P. Ex. 22). This document would tend to reveal the methods used by the National Office of the Internal Revenue Service to effect the revocation of plaintiff's tax exemption. It reveals a denial of due process to plaintiff. Mr. Wolfe stated to his subordinates in Dallas and Oklahoma City that the National Office had prepared a written memorandum (P. Ex. 23) embodying therein a proposed letter to be sent from the Oklahoma District Office to plaintiff, revoking plaintiff's tax exemption. The files of the IRS revealed that in the long distance conference telephone call the National Office directed its District Office in Oklahoma City to perform the following (quoting from the IRS written memorandum of the call) (P. Ex. 22):

> "Here are some more points which we did not want to put in the memorandum.
>
> "1. We would like to have the letter issued no later than Friday, November 13.
>
> "2. In the memorandum we have mentioned the development of additional material. This should be done during the conference or after the conference. In other words, we don't think any further field audit contact should be made prior to the conference.
>
> "3. In the meeting that we had with you on Sept. 19 we indicated that there would be a legal memorandum forthcoming, This memorandum has not been developed and will not be forthcoming. We have discussed the case with Counsel and they have generally agreed with it, but the legal memorandum is not ready. We hope to get it at a later date.
>
> "We are sending you, I think, all the information you really need to hold the conference and develop your report.
>
> "4. If the taxpayer's representative or Hargis should happen to be there and ask you

whether the National Office has considered this matter, there is certainly no prohibition against telling him the file has been reviewed by the National Office. In other words, I don't think you should try to cover up the fact that this has been reviewed by the National Office. Somebody could have leaked it out. There are numerous ways these people have of finding out if the National Office has looked at something. I certainly think if they press you on this you should be forthright about it and tell them the National Office has reviewed the file.

"5. There is a draft of the suggested letter in the package. You will sign the suggested letter to the Christian Echoes Ministry, Inc. If you have any problems, get in touch with Mr. Davis or call me.

"6. We do not believe you should show Hargis or his representatives any material developed by the National Office.

"7. * * * In our memorandum we said we have a case analysis. We don't think you should show the case analysis to them, but the material and pamphlets—you are certainly free to show them that. The case analysis is backed up by this material. There is nothing in the case analysis that is not backed up by some material furnished. Instead of going into the case analysis, use that material as the background for your conference. Use the Agent's materials secured from or furnished by Hargis. The whole case must be based on his activities as shown by the materials he has furnished. The case analysis is developed entirely from the material you have either secured from him or he has furnished—primarily 99.44% if we have to go that far. Also—while I am on the case analysis—this is cross-referenced to the details furnished—to the pamphlets and other materials. We have a complete cross-reference.

"8. We would like to have a feedback report as well as a copy of the final letter which is mailed to the taxpayer. We would like for this to be sent to Mr. Marshall Davis.

"9. We would also appreciate a conference summary if a District conference is held.

* * * * * *

"Mr. WOLFE. * * * If you can develop the case file it would be of material help in finally settling or disposing of the case—whether in your office or here."

The above constitute directives and not technical advice. The memorandum of the telephone conversation reveals the administrative decision to revoke plaintiff's tax exemption was made by the National Office before sufficient evidence had been accumulated. It discloses the decision was made without formal advice of legal counsel within the Internal Revenue Service. The decision was arbitrary as well as discriminatory and is evidence of denial of due process.

34. Following those directives from the National Office, Mr. Clyde L. Bickerstaff, the District Director in Oklahoma City, on November 13, 1964, mailed the letter composed in the National Office to plaintiff advising that the Internal Revenue Service had concluded that plaintiff did not qualify under the applicable provisions of law for tax exemption and that the Service proposed to revoke the previous ruling in accordance with procedures outlined in Revenue Procedures 62–30. The November 13, 1964, revocation letter (P. Ex. 24) stated among other things:

"Exemption History

"Based on evidence submitted by you in support of your March 28, 1952, application for a ruling as to your tax status, the Internal Revenue Service ruled on March 12, 1953, that you

were exempt from Federal income tax and qualified for charitable contributions under the provisions of sections 101(6) and 23 (o) and (q) of the 1939 Internal Revenue Code.

"You were classified in the 1953 ruling letter as 'organized and operated exclusively for religious and educational purposes.' * * *

* * * * * *

"Basis of Denial of Exempt Status

"On the basis of a review of the information submitted by your organization relating to your operations during 1961, 1962 and 1963, we have concluded:

"(1) You are not operated exclusively for religious, educational or charitable purposes within the meaning of sections 501 (c)(3) and 170(c) of the Internal Revenue Code. * * *"

35. The decision of the National Office of the Internal Revenue Service was based on a "case analysis" (P. Ex. 22, ¶ 7) of the work product of plaintiff, that is, what plaintiff said by words in its sermons, its radio broadcast, its magazines, and other publications. Defendant urges the Court to decide this case upon the single isolated issue of distilling and interpreting the written and spoken words of plaintiff. Defendant thereby has at no stage of these proceedings raised the issue of sincerity of plaintiff's belief, and it is not necessary that the Court make a finding on such issue.

36. On June 25, 1965, plaintiff filed a formal protest with the District Director of the Internal Revenue Service at Oklahoma City. A conference was held and the protest was overruled. A conference was then held at the National Office of the Internal Revenue Service in Washington, D.C., and again plaintiff's pro-

test was overruled. These hearings were not held pursuant to Rev. Proc. 62–29 (now Rev. Proc. 67–2) but were all held *after* the IRS had already made its decision to revoke plaintiff's exemption and had so notified plaintiff.

37. The Internal Revenue Service next levied FICA taxes against plaintiff on December 7, 1967 (P. Ex. 56; 57) and plaintiff appealed this to the Appellate Division in Oklahoma City on December 28, 1967 (P. Ex. 55) to protest the levying of these taxes. Mr. O. L. Green, Conferee, Appellate Division, Internal Revenue Service, Oklahoma City, conducted the hearing on January 17, 1968. The objections and protests to the assessment of the taxes were overruled and telephoned to the Austin, Texas, Computer Office of the IRS on the afternoon of January 17, 1968, although the official decision of the Internal Revenue Service Appellate Division was not prepared and dispatched until one day later, January 18, 1968.

38. For the assistance of District Directors in making examinations and audits of organizations holding tax exemption determination letters, the Internal Revenue Service has adopted Revenue Procedures applicable to this case. These are Revenue Procedure 62–29 which was superseded on January 3, 1967, by Revenue Procedure 67–2 (P. Ex. 29) and Revenue Procedures 62–30 and 63–30 which were superseded by Revenue Procedure 67–3 (P. Ex. 29–A) on January 3, 1967. Material portions of the 1967 procedures are essentially the same as the 1962 and 1963 procedures. Under these procedures when a District Director in any case under examination is uncertain of applicable law, or procedure, or has made a decision with which the taxpayer disagrees, either the taxpayer or the District Director himself may refer the question together

with a statement of the facts and issues to the office of the Assistant Commissioner (Technical) of the Internal Revenue Service in Washington, D.C., for technical and professional advice.

These procedures are established for the purpose of providing local IRS offices and their personnel with consistent technical and professional advice on tax matters (Rev. Proc. 67–2, § 2.01). The National Office serves in this instance, however, only in an advisory capacity to the District Office, not an administrative one. The District Office retains the authority for final decision making. In plaintiff's case, however, the National Office preempted this authority and made the final decision itself. This decision was contrary to four previous conclusions reached by experienced investigating officials of the Tulsa Office of the Internal Revenue Service favorable to plaintiff.

If a District Director of the IRS initiates the procedure, he is required to notify the taxpayer of his action, furnish a copy of his papers, including a copy of the Revenue Agent's report, to the taxpayer, and give taxpayer ten days' notice in which to prepare what the taxpayer may believe to be a more correct statement of the facts and issues of law involved (Rev. Proc. 67–2, §§ 4.05, 4.06). Under these procedures the organization under examination is entitled as a matter of right, to a conference in the National Office of the Assistant Commissioner (Technical) before a decision is made in order to present its side of the case (§ 4.09). The only exception to this right to a conference is when it appears that the question is a matter of internal concern within the Internal Revenue Service Office or where it could be prejudicial to the interest of the Internal Revenue Service, such as cases involving fraud or jeopardy assessments

(§ 4.10). Neither of these reasons is applicable here and the Internal Revenue Service denied plaintiff its rights provided by the Service's own published procedures.

39. A further reading of Revenue Procedures 67–2 and 67–3 shows that portions of these procedures were ignored by the Internal Revenue Service. The Service did not follow its own rules of procedure in that it already had two reports from Revenue Agent Donovan and a report made jointly by Agents Donovan and Riggs dated July 7, 1963, all of which exonerated plaintiff completely from any violation of Section 501(c)(3) described above. Agent Riggs was thereafter directed during the last half of 1963 to make a fourth audit and examination of plaintiff's activities. Mr. Riggs did not finish his report of this investigation until November 27, 1963, but cleared plaintiff not only as to the inurement test but also as to any political activities. Weeks before this time Agent Riggs had gone to plaintiff's headquarters pursuant to directives of the National Office, and gathered in all the books, magazines, tapes, records, sermons and other documents of plaintiff he thought the IRS wanted. Agent Riggs collected these, together with exhaustive financial information, and sent them through the Oklahoma City Office to the National Office on October 29 and November 6, 1963 (P. Ex. 14, 15), and, as previously instructed by the National Office, made no comment or recommendation upon them, except to state there was no evidence of support of political candidates or legislation. This failure of the Revenue Agent to make recommendations was a direct violation of IRS procedures and is further evidence of denial of due process to plaintiff.

40. The nature and scope of plaintiff's program of activities were apparently understood by the IRS in

its conclusions and decision to exempt plaintiff from taxation in 1953. That program revealed plaintiff's spiritual belief is founded on the premise that Christianity is the Hope of the World, and that Communism, avowedly Anti-Christ, seeks to destroy the Christian Church and the United States. The nature of plaintiff's activities during the years involved in this suit, although those activities have been expanded by plaintiff's growth, is identical with the activities of plaintiff during the years preceding the issuance of the exemption letter.

41. Plaintiff raises the issue of retroactive assessments wherein, following the revocation of plaintiff's tax exemption, the Commissioner assessed FICA taxes retroactively through 1961. This is a subordinate issue and the Court's findings on other issues favorable to plaintiff make it unnecessary for the Court to consider such issue.

42. Defendant makes no contention, nor has there been any proof offered that the Internal Revenue Service was mistaken in interpreting the material submitted and plaintiff's right to tax exemption in 1953, or that the Internal Revenue Service was proceeding under mistake of fact or law at the time the original exemption was granted by it in 1953.

43. Defendant has characterized certain of plaintiff's activities during the years involved in this suit as urging the public to contact members of legislative bodies for the purpose of proposing, supporting or opposing legislation. Plaintiff has characterized the same activities as taking stands on issues of the day concerning matters which it construes to threaten its religious beliefs. The Court finds that these activities have resulted from plaintiff's religious beliefs and were merely incidental to the exercise of its religion and the expression and dissemination of its understanding

of biblical concepts. The Court further finds that any such activities by plaintiff were insubstantial in relationship to the totality of plaintiff's activities.

44. Defendant, in describing and characterizing plaintiff's activities as political and non-religious, has in fact indicated a disagreement with the content and nature of what plaintiff has said and written. Defendant has thereby sponsored its own definitions of "religion" and "religious." Such definitions by defendant are impermissable. Administrative definitions of the terms "religion" and "religious" are conspicuously, and for good reason, omitted from IRS. Regulations. (See IRS Regulations, Internal Revenue Code of 1954 under § 501(c)(3).

45. Plaintiff's expression of opinion on "current issues or issues of the day" is not an act contemplated by prohibition against intervention in political campaigns or legislation and is not a violation of the provisions of Internal Revenue Code. Plaintiff believes the threat of Communism is a direct threat against the Christian religion and that plaintiff's Anti-Communist activities are representative of a dedication toward its religious activities. Churches and religious organizations cannot be isolated or insulated from the outstanding issues of the day and religious organizations should encourage their members and participants to take active stands and get involved as far as their religious beliefs are concerned and to fight against those things they believe to be anti-religious. Active current involvement by numerous churches and religious organizations is revealed in the daily press.

46. According to the uncontradicted testimony of plaintiff's witnesses, the National Council of Churches, the National Methodist Church, the National Presbyterian Church, and other national religious organizations, during the years in question, have taken stands

on public issues opposite those taken by plaintiff. Those religious organizations are listed as exempt in Publication No. 78 of the Cumulative Bulletin currently published by the Internal Revenue Service, an official publication of the IRS setting forth organizations which are exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954 and its amendments. Although specifically requested by this Court during the trial herein, defendant has not furnished the Court with any reply as to this obvious disparity in treatment of religious organizations. One of the factors relating to defendant's arbitrary selection of plaintiff to be investigated and exempt status revoked, according to defendant's counsel, is the fact plaintiff's smaller size lent itself to investigation, whereas many exempt organizations such as churches and associations of churches are so large and widespread as to effectively prohibit examination by the Internal Revenue Service (Tr. 36).

47. Defendant discriminated in the administration of Section 501(c)(3) of the Internal Revenue Code of 1954 by consciously and arbitrarily selecting plaintiff from other tax exempt organizations engaged in similar activities and revoking its tax exemption.

The evidence submitted would tend to show this plaintiff might have been chosen as an example, as charged in the complaint. The facts proved in this case by plaintiff establish an administration of the tax law by the Internal Revenue Service directed so exclusively against plaintiff as to warrant and require the finding that, whatever may have been the intent of § 501(c)(3) of the Internal Revenue Code of 1954 when adopted, it has been applied against plaintiff in this case by the Internal Revenue Service as an oppressive tool.

48. Christian Echoes National Ministry, Inc., is organized and operated exclusively for religious and educational purposes as contemplated by § 501(c)(3) of the Internal Revenue Code of 1954 and the applicable treasury regulations.

49. Defendant has stipulated in the Pre-Trial Order that no part of the net earnings of Christian Echoes National Ministery, Inc., inured, during the years here involved, to the benefit of any private shareholder or individual as contemplated by § 501(c)(3) of the Internal Revenue Code of 1954 and the applicable treasury regulations.

50. The Court finds that any separation of functions of the plaintiff organization, such as the incorporation of Church of the Christian Crusade, Inc., subsequent to the notice of the Internal Revenue Service's intent to revoke its tax exempt status is no indication, proof or evidence that plaintiff was engaged in any activity prohibited by § 501(c)(3) of the Internal Revenue Code of 1954 but was an effort by plaintiff to procure what protection was available under the Internal Revenue Code of 1954 from defendant's activities in attempting to close it down, and further reflected the expansion of activities of Dr. Hargis and his followers.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and parties to this action.

2. Plaintiff is organized and operated exclusively for religious and educational purposes, no part of the net earnings of which inured during the years here involved to the benefit of any private shareholder or individual, no substantial part of the activities of which was carrying on propaganda, or otherwise attempting, to influence legislation, did not participate

in, or intervene in (including the publishing and distributing of statements), any political campaign on behalf of any candidate for public office, all within the purview of § 501(c)(3) of the Internal Revenue Code of 1954. *Girard Trust Co.* v. *Commissioner of Internal Revenue,* 122 F.2d 108 (3d Cir. 1941).

3. Plaintiff's organization and structure, its practices, precepts, and activities provide all the necessary elements of and is legally defined a "church" in the ordinary accepted meaning of the term and as used in the Internal Revenue Code of 1954, its amendments and applicable regulations. Dr. Billy James Hargis, founder of plaintiff, held the office of Pastor, and the other ordained ministers on plaintiff's staff were Assistant Pastors. Plaintiff's followers together with its ordained pastors constitute a congregation the same as any local church.

4. The activities of plaintiff are singularly motivated by the sincere religious conviction of plaintiff's followers. The Court having found as fact that plaintiff through its followers believes in the religious nature of its activities, neither defendant nor this Court may inquire into such activities and work product of plaintiff for the purpose of determining whether those activities claimed by plaintiff to be religious are religious or political and, if political, whether substantial, for the purpose of denying tax exempt status to plaintiff. To make such an inquiry would first require this Court to define the terms "religious" and "political," then separate plaintiff's activities into these two categories applying those labels thereto under definitions established by this Court. This action would require both a quantitative and qualitative analysis of plaintiff's activities. To do so would require an interpretation of the meaning of the church doctrine espoused by plaintiff and a determination of

the relative significance of the religion of plaintiff to its activities. This requires this Court to determine facts at the very core of a religion—an interpretation of particular church doctrine and the importance of those doctrines to the religion. The First Amendment to the United States Constitution clearly forbids civil courts from playing such a role. *United States* v. *Ballard*, 322 U.S. 78 (1944); *Presbyterian Church* v. *Mary E. B. Hull, Mem. Pres. Church*, 393 U.S. 440 (1969).

5. The First Amendment to the Constitution of the United States prohibits defendant and this civil court from designating what religion is or is not and defining the scope of a religion and thereby excluding from the enjoyment of tax exempt status those organizations which do not meet that definition.

6. Defendant in revoking the tax exemption of plaintiff discriminated in the administration of § 501 (c)(3) of the Internal Revenue Code of 1954 by consciously and arbitrarily selecting plaintiff from other tax exempt organizations engaged in similar activities. The Court concludes as a matter of law that this discrimination and unequal treatment of plaintiff by defendant are of such nature and scope as to constitute violation by defendant of the due process clause of the Fifth Amendment to the Constitution of the United States. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1885); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Neild* v. *District of Columbia*, 110 F. 2d 246 (D.C.C.A. 1940).

7. Defendant, in its application of § 501(c)(3) of the Internal Revenue Code wherein it has denied a tax exemption to plaintiff, without evidence to support its action and without constitutionally justifiable cause, in violation of the First Amendment to the Constitution of the United States, has denied the

free exercise of religion to, and discriminated against, plaintiff. *Speiser* v. *Randall*, 357 U.S. 513 (1958); *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943); *Fowler* v. *Rhode Island*, 345 U.S. 67 (1953); *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

8. Defendant in its administrative proceedings to revoke plaintiff's tax exemption has denied plaintiff due process as guaranteed under the Fifth Amendment to the United States Constitution since defendant willfully violated established and published regulations, procedures, and directives promulgated by defendant for the protection of both its rights and those of taxpayer. *United States* v. *Heffner*, 420 F.2d 809 (4th Cir. 1970); *United States* v. *Leahey*, 434 F.2d 7 (1st Cir. 1970).

9. Having itself met the requirements for tax exemption under § 501(c)(3) of the Internal Revenue Code of 1954 and the applicable treasury regulations, and by its protection under the First and Fifth Amendments to the Constitution of the United States, as hereinbefore concluded, wages paid by plaintiff are not subject to the tax imposed by § 3111 of the Internal Revenue Code of 1954 under the provisions of § 3121(b)(8)(B) of the Internal Revenue Code of 1954, and plaintiff is entitled to a refund of FICA Taxes paid for the years 1961, 1963, 1964, 1965, 1966, 1967, and 1968, together with statutory interest. Plaintiff is entitled to judgment against the United States of America for the following sums paid:

1961—All quarters	$10,972.53
1963—All quarters	10,038.71
1964—All quarters	10,483.11
1965—All quarters	13,618.18
1966—Quarter ending March 31	5,728.52
Quarter ending June 30	5,022.34
September 22 through September 30	354.80

Quarter ending September 30	5,828.31
Quarter ending December 31	4,351.61
1967—Quarter ending March 31	4,770.59
Quarter ending June 30	3,781.48
Quarter ending September 30	4,238.99
Quarter ending December 31	4,341.13
1968—Quarter ending March 31	5,150.73
Quarter ending June 30	4,546.72
Quarter ending September 30	6,086.48
Quarter ending December 31	4,179.35
Total	$103,493.08

together with statutory interest.

10. Plaintiff is entitled to its costs.

11. Plaintiff is directed forthwith to prepare and submit a Judgment in conformity with the Findings of Fact and Conclusions of Law.

Entered this 24th day of June, 1971.

ALLEN E. BARROW,
Chief United States District Judge.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma ss.:

I hereby certify that the foregoing is a true copy of the original on file in this Court.

JOHN H. POE, *Clerk.*
By JACK C. SILVER, *Deputy.*

APPENDIX B

In the United States District Court
Northern District of Oklahoma

No. 67–C–114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC., A RELIGIOUS CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

JUDGMENT

This action came on for trial before the undersigned Judge, and the issues having been duly tried, and a decision having been duly rendered;

IT IS ORDERED AND ADJUDGED: That the plaintiff, Christian Echoes National Ministry, Inc., recover of the defendant, United State of America, the sum of $103,493.08, together with interest at the rate of six (6) percent per annum from the respective date each portion of such sum has heretofore been paid by plaintiff to defendant, and costs.

Dated June 24, 1971.

ALLEN E. BARROW,
Chief United States District Judge.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma, ss:

I hereby certify that the foregoing is a true copy of the original on file in this Court.

JOHN H. POE, *Clerk.*
By JACK C. SILVER, *Deputy.*

APPENDIX C

In the United States District Court for the

Northern District of Oklahoma

Civil No. 67–C–114

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.,
PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF APPEAL

NOTICE is hereby given that, pursuant to 28 U.S.C. § 1252, the defendant, United States of America, hereby appeals to the Supreme Court of the United States from the judgment entered herein on June 24, 1971.

NATHAN G. GRAHAM,
United States Attorney.

By BEN A. DOUGLAS,

Attorney, Tax Division, Department of Justice, 8E2 Federal Office Building, 1100 Commerce Street, Dallas, Texas 75202, Attorney for Defendant.

Filed JULY 23, 1971.

APPENDIX D

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 501.

EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) *Exemption From Taxation.*—An organization described in subsection (c) or (d) * * * shall be exempt from taxation under this subtitle * * *.

* * * * *

(c) *List of Exempt Organizations.*—The following organizations are referred to in subsection (a):

* * * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publish or distributing of statements), any political campaign on behalf of any candidate for public office.

* * * * *

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.):

* * * * *

§ 1.501(c)(3)-1 *Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

(a) ORGANIZATIONAL AND OPERATIONAL TESTS.—(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

(b) ORGANIZATIONAL TEST.—(1) IN GENERAL.—(*i*) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than,

the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes within the meaning of section 501(c)(3) of the Code" shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes," such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).

(iii) An organization is not organized exclusively for one or more exempt purposes if its article expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business," or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501(c)(3) of the Code."

(iv) In no case shall an organization be considered to be organized exclusively for one or

more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(v) An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (see paragraph (b) of § 1.501(a)–1).

(2) ARTICLES OF ORGANIZATION.—For purposes of this section, the term "articles of organization" or "articles" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

* * * * *

(c) OPERATIONAL TEST—(1) PRIMARY ACTIVITIES.—An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) DISTRIBUTION OF EARNINGS.—An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholder or individual", see paragraph (c) of § 1.501(a)–1.

(3) "ACTION" ORGANIZATIONS.—(i) An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(ii) An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization—

(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(b) Advocates the adoption or rejection of legislation.

The term "legislation", as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(iv) An organization is an "action" organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(v) An "action" organization, described in subdivisions (ii) or (iv) of this subparagraph, though it cannot qualify under section 501(c)(3), may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in paragraph (a) of § 1.501(c)(4)-1.

(d) EXEMPT PURPOSES—(1). IN GENERAL.—(i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

(a) Religious,
(b) Charitable,
(c) Scientific,
(d) Testing for public safety,
(e) Literary,
(f) Educational, or
(g) Prevention of cruelty to children or animals.

* * * * *

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-565

UNITED STATES OF AMERICA
Appellant

vs.

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.
Appellee

MOTION TO DISMISS
BRIEF IN SUPPORT OF MOTION TO DISMISS
MOTION TO AFFIRM
BRIEF IN SUPPORT OF MOTION TO AFFIRM

LeROY BLACKSTOCK
CRAIG BLACKSTOCK
Attorneys for Appellee

Blackstock Joyce & Pollard
1304 Petroleum Club Building
Tulsa, Oklahoma 74119

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-565

UNITED STATES OF AMERICA
Appellant

vs.

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.
Appellee

MOTION TO DISMISS

Appellee, Christian Echoes National Ministry, Inc., respectfully moves that this Court dismiss this appeal filed by appellant, United States of America, for the reason that jurisdiction for appeal of the decision directly from the decision of a United States District Court properly lies with a Circuit Court of Appeals and not with this Court.

MOTION TO AFFIRM

In the alternative, appellee, Christian Echoes National Ministry, Inc., respectfully moves that this Court affirm the

decision entered on June 24, 1971, by the United States District Court for the Northern District of Oklahoma for the reason that appellee is clearly entitled to judgment in its favor.

Respectfully submitted,

BLACKSTOCK JOYCE & POLLARD
By: LeROY BLACKSTOCK
Attorneys for Appellee

Blackstock Joyce & Pollard
1304 Petroleum Club Building
Tulsa, Oklahoma 74119

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-565

UNITED STATES OF AMERICA
Appellant

vs.

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.
Appellee

BRIEF IN SUPPORT OF APPELLEE'S MOTION TO DISMISS

Findings of Fact and Conclusions of Law of the District Court appear at pages 1a-32a of the Jurisdictional Statement and recite a definitive chronology of the trial court record.

Appellant (hereafter "Government") urges jurisdiction under 28 U.S.C. 1252. The sole question to be determined is whether the decision of the United States District Court held an Act of Congress unconstitutional.

Appellee's (hereafter "Christian Echoes") remarks are directed to pertinent jurisdictional arguments in Government's Jurisdictonal Statement.

Internal Revenue Service (hereafter "IRS") revoked Christian Echoes' tax exempt status alleging:

1. Christian Echoes was not operated exclusively for religious purposes;

2. Christian Echoes had engaged in substantial activity aimed at influencing legislation;

3. Christian Echoes had intervened in political campaigns on behalf of candidates for political office. (Jurisdictional Statement, pp. 7, 9)

The District Court reversed the ruling of IRS on all three points.

Government does not dispute the District Court's rejection of its first ground for revocation. Government concedes that Christian Echoes *was operated exclusively* for religious purposes during the years in question. (*Id.* at 9, Note 5.)

Government challenges only the District Court's rejection of IRS's second and third grounds for revocation.

Government argues that the District Court found §501 (c)(3) of the Internal Revenue Code of 1954 unconstitutional "as applied" to Christian Echoes because the District Court found that IRS may not determine religious activities are political and revoke tax exemption on that basis. Government reasons that the District Court reversed

the IRS revocation as an unconstitutional infringement on the free exercise of religion. (*Id.* at 9.)

Christian Echoes urges that since Government concedes Christian Echoes was operated exclusively for religious purposes during the years in question, both Government's challenge to the District Court's rejection of IRS's second and third grounds for revocation and Government's claim of jurisdiction in this Court are untenable. Christian Echoes urges that:

> 1. The pertinent exempt and nonexempt activities described in §501(c)(3) are mutually exclusive;
>
> 2. The District Court did not find §501(c)(3) unconstitutional as applied to Christian Echoes;
>
> 3. IRS administered §501(c)(3) against Christian Echoes in a manner unjustified by both the provisions of that section and the Treasury Regulations thereunder.

Reduced to its essentials, as concerns this appeal, §501(c)(3) defines exempt organizations as:

> (3) Corporations . . . organized and operated exclusively for religious . . . purposes . . ., no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Government concedes Christian Echoes met the requirements of the following portion of the exemption statute:

> Corporations . . . organized and operated exclusively for religious . . . purposes . . . .

Government argues Christian Echoes disqualified for tax exemption by reason of engaging in prohibited activities under the following portion of the statute:

> . . . (N)o substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The question to resolve is whether the two portions of the statute are mutually exclusive. If Christian Echoes is exclusively religious, can the remaining portion of the statute (concerning support of legislation and political candidates) apply?

Regulations authorized by 26 U.S.C. 7805 are interpretations of the meaning of the tax law by the Commissioner and have the force of law unless inconsistent with the statute. *Gunn v. Dallman*, 171 F.2d 36 (7th Cir. 1948). Regulations are binding on both the Government and the taxpayer. *Miller v. Commissioner of Internal Revenue*, 333 F.2d 400 (8th Cir. 1964).

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.) provide:

> § 1.501(c)(3)
>
> (c) OPERATIONAL TEST — (1) PRIMARY ACTIVITIES. — An organization will be regarded as

> "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

This Regulation defines the term "operated exclusively" and provides both a positive and a negative explanation of exempt activities. The Regulation provides an "either-or" situation. It demonstrates the fact that "operated exclusively" is an exclusive description of an organization which has included in its character none of the disqualifying characteristics described in the statute and Regulations. The Regulation separates the exempt and non-exempt.

Subsection (3) of the Regulation provides:

> (3) "ACTION" ORGANIZATIONS. — (i) An organization is *not operated exclusively* for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph. (Emphasis added.)

Stated conversely, if an organization may be defined as an "action" organization, it is "not operated exclusively" for an exempt purpose. Christian Echoes, by Government's admission being "operated exclusively" for religious purposes, cannot be described as an "action" organization.

The Regulations clearly define an "action" organization. Subdivisions (ii), (iii), and (iv) provide:

> (ii) An organization is an "action" organization if a substantial part of its activities is attempting to

influence legislation by propaganda or otherwise . . . .

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office . . . .

(iv) An organization is an "action" organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

If the activities of Christian Echoes fall within the definitions enumerated in (ii), (iii), or (iv) above, Christian Echoes would be an "action" organization and could not be described as "operated exclusively" for religious purposes.

The Regulation, then, provides that if a substantial portion of an organization's activity is to influence legislation or if an organization intervenes in any political campaign on behalf of a candidate for public office, it is not an organization operated exclusively for religious purposes under §501(c)(3). When Government admits that Christian Echoes is operated exclusively for religious purposes, Government necessarily admits, under its own Regu-

lations, that Christian Echoes does not devote a substantial portion of its activities to the carrying on of propaganda or otherwise attempting to influence legislation and that Christian Echoes has not participated in, or intervened in, any political campaign on behalf of any candidate for public office. Government thereby admits Christian Echoes is not an "action" organization and is immune from attacks alleging disqualification. Having made this admission, the issue raised by Government as to whether it may revoke Christian Echoes' exempt status because of political activity is moot. Probable jurisdiction for appeal to this Court is not shown.

Congress must be presumed to have created a constitutional statute. *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944). A court should construe legislation with a view toward bringing it within constitutional requirements. *American Power & Light Co. v. Securities & Exchange Commission*, 329 U.S. 90 (1946). The constitutional restrictions on defining religion, *United States v. Ballard*, 322 U.S. 78 (1944), are accepted by Government in its failure to define that term in its Regulations and by Government's admission that Christian Echoes was operated for exclusively religious purposes. Congress is presumed to have recognized the long standing absence of a definition of "religion" in the Regulations and thereby validated such Regulation promulgated by Government due to its long standing. *Boehm v. Commissioner of Internal Revenue*, 326 U.S. 287 (1946). The constitutional, historical, and logical interpretation of §501(c)(3) is that the prohibited political activity must fall outside the arena of the exempt purpose. Government has accepted this interpretation by

the terms of its Regulations. Section 501(c)(3) is constitutional in its content and purpose and when it is applied as intended by Congress, it does not have an unconstitutional effect. Government erroneously, and in violation of its own Regulations, administratively utilized that section to revoke the tax exempt status of Christian Echoes. Section 501(c)(3), properly applied to Christian Echoes, is not unconstitutional.

Christian Echoes respectfully states to this Court that the necessary requirements for this Court to asume jurisdiction under 28 U.S.C. 1252 are not present in this appeal and that this Court, therefore, does not have jurisdiction in this matter.

BRIEF IN SUPPORT OF APPELEE'S MOTION TO AFFIRM

Christian Echoes expressly reserves its position that this Court is without jurisdiction to hear this appeal as set out in its Motion to Dismiss and Brief in Support of its Motion to Dismiss. In the alternative, and in the event this Court should find that it has jurisdiction over this appeal, Christian Echoes respectfully moves that this Court affirm the decision of the District Court without further proceeding in this appeal.

Christian Echoes was a tax exempt religious organization under the provisions of §501(c)(3) of the Internal Revenue Code of 1954. In 1966, the IRS revoked that tax exempt status and assessed taxes. Those taxes were paid and a suit was filed by Christian Echoes in the United States District Court for the Northern District of

Oklahoma for refund of taxes paid. The District Court found in favor of Christian Echoes. Government appealed to this Court under the provisions of 28 U.S.C. 1252 which authorizes direct appeal to this Court from a final judgment of a Court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party. Government alleges that the District Court found that §501(c)(3) of the Internal Revenue Code of 1954, as applied to Christian Echoes, was unconstitutional. Christian Echoes denies that allegation as set forth in its Brief in Support of its Motion to Dismiss.

Assuming, however, that §501(c)(3) is interpreted in such a fashion as to uphold the contention of Government that the District Court found it to be unconstitutional as applied to Christian Echoes, Christian Echoes moves that this Court affirm the decision of the District Court in that it is apparent from the record that Christian Echoes should prevail and that no purpose will be served by proceeding further in this appeal.

The District Court found the issues in favor of Christian Echoes on four basic grounds:

1. Christian Echoes meets the requirements of §501(c)(3) of the Internal Revenue Code of 1954 regardless of constitutional limitations upon the definition of religion by Government, that is, Christian Echoes is a corporation organized and operated exclusively for religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which

does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office;

2. Government exceeded its constitutional boundaries set by the First Amendment to the United States Constitution by determining that the alleged political activity disentitled Christian Echoes to exemption under §501(c)(3) when that activity was religious, and the revocation of that exemption is a damaging discrimination against Christian Echoes;

3. Government unconstitutionally discriminated against Christian Echoes and denied Christian Echoes due process guaranteed by the Fifth Amendment to the United States Constitution by consciously and purposefully selecting Christian Echoes from all religious organizations and revoking its tax exempt status while allowing other religious organizations similarly organized and operated to retain their tax exempt status;

4. Government denied Christian Echoes due process as guaranteed by the Fifth Amendment to the United States Constitution by consciously and purposefully disregarding its own published Regulations and procedures to be followed in revoking a previously exempt organization's tax exempt status.

Christian Echoes submits that a decision affirming any one of the above findings by the District Court is sufficient to find the issues in favor of Christian Echoes and affirm the decision of the District Court.

Christian Echoes fully complies, regardless of the requirements of the First Amendment and the free exercise

of religion clause thereof, with the requirement of §501(c)(3) even if this Court determines that Government was proper in determining if the activities of Christian Echoes are political and making a quantitative judgment thereon. The District Court specifically found that, considering the totality of the activity of Christian Echoes, any alleged political activity was an insignificant portion of the overall operation and activity of Christian Echoes. Government submitted to this Court an exhibit, referred to on page 3 of its Jurisdictional Statement, which was "a separately bound exhibit volume containing pertinent excerpts from many of the Government's exhibits, . . ." Government has lifted from certain specific publications of Christian Echoes statements which it alleges comprise political activity. Nowhere in that volume is any reference to the totality of Christian Echoes' activity, the number of weddings performed, choir practices held, sermons preached, revival meetings held, prayers offered, or baptisms performed by Christian Echoes' agents. The exhibit volume is incompetent as a matter to be considered by this Court as it is a document compiled with no intention whatsoever to indicate the totality of Christian Echoes' activities and what portion of those activities are allegedly political in nature.

Treasury Regulations on Income Tax §1.501(c)(3) provides the proper guideline for applying quantitative analysis to test the substantiality of prohibited activities allegedly engaged in by Christian Echoes. The IRS has ignored its published administrative procedures in that subparagraph (iv):

> (iv) . . . in determining whether an organization has such characteristics (prohibited political activity), all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

The District Court had the opportunity to hear each of the witnesses offered by Government and Christian Echoes, had the opportunity to observe each of the witnesses personally, and reviewed *in camera* the exhibits offered by Government and Christian Echoes and introduced into evidence, and found, rightfully so, by a preponderance of the evidence, that a substantial portion of Christian Echoes' total activities was not devoted to political purposes.

In a footnote at page 12 of its Jurisdictional Statement Government notes that it is difficult for Government to understand how the District Court could find the alleged political activities were merely incidental to the exercise of Christian Echoes' religion and to further find that neither the Court nor Government could constitutionally inquire into the activities of Christian Echoes to determine if they were religious or political. As indicated on page 7 of the Jurisdictional Statement of Government, one of the grounds of revocation was that Christian Echoes was not operated exclusively for religious purposes. The District Court found otherwise. From this determination that all of Christian Echoes' activities were for a religious purpose it is not difficult to conceive that the District Court found that any alleged political activities were incidental in nature to the exempt purpose of Christian Echoes and that those

activities were insubstantial in relation to the overall program of Christian Echoes.

What the District Court did find was that Government could not set up two separate categories, one religious and the other political, and examine the activities of Christian Echoes determining that some activities were religious and not political and that others were political and not religious. The District Court found that neither it nor Government could define religion for the purpose of calling certain activities political and not religious. No governmental body may define religion for the purposes of excluding certain activities from the enjoyment of tax exempt status.

The second issue found by the District Court in favor of Christian Echoes concerns the unconstitutional definition of religion discussed in detail in the above Brief in Support of Appellee's Motion to Dismiss. The free exercise clause of the First Amendment to the United States Constitution effectively prohibits the sovereign from denying a privilege to a religious organization based upon the nature of that organization's activities unless those activities are a clear and present danger. *West Virginia State Board of Education v. Barnett*, 319 U.S. 624 (1943). Such discrimination would amount to a denial, in relation to other religious organizations, of the free exercise of religion by Christian Echoes.

The third issue found by the District Court in favor of Christian Echoes is that other religious organizations similarly organized and operated and engaging in similar activities have been allowed to operate completely un-

fettered while the IRS singled out Christian Echoes for revocation. Such activity on the part of the Government is constitutionally unacceptable. Whatever may have been the intent of §501(c)(3) as adopted, if that section is applied by the governmental agency charged with its administration and thus representing the Government in a fashion so unequal and oppressive as to amount to a practical denial of equal protection of the laws, it is a violation of the Fifth Amendment to the Constitution. Although the section itself appears fair and impartial on its face, it was applied and administered by Government with an unequal hand making unjust and illegal discriminations between taxpayers in similar circumstances, material to their rights, and that denial of equal justice is within the prohibition of that Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356 (1885).

Government does not have a license to destroy vindictively. Every citizen is entitled to the equal protection of the laws as they may be adopted and administered by Government throughout the land. It is not proper or lawful for Government to treat Christian Echoes in one fashion and other like organizations in another. The enforcement of §501(c)(3) in an uneven manner against only selected organizations without constitutionally acceptable bases for selection offends the American notion of justice and fair play. The IRS is charged with the collection of tax. It has no constitutional authority to apply its powers selectively without a proper reason for distribution between like citizens.

The District Court also found as a ground for the return of Christian Echoes' tax exempt status that Government had willfully violated established and published regu-

lations, procedures and directives promulgated by Government for the protection of both its rights and those of taxpayers. *United States v. Hefner*, 420 F.2d 809 (4th Cir. 1970). Government was required to scrupulously observe its rules, regulations and procedures which it established. Christian Echoes submitted uncontroverted evidence that such was not the case in the revocation of the exempt status of Christian Echoes. When Government failed to follow its rules, regulations and procedures, it was guilty of arbitrary procedure in finding Christian Echoes not entitled to tax exempt status. The Findings of Fact by the District Court amply support that conclusion of law.

One segment of the uncontroverted evidence was that the IRS in its search for ways to remove Christian Echoes' exemption made four audits, investigations and reinvestigations by two competent, experienced revenue agents. Four separate revenue agent's reports were prepared, each one unqualifiedly concluding that Christian Echoes at all times during the years involved operated within its authorized exemption. Despite this, the National Office of the IRS violated its administrative procedures as clearly enumerated in the Findings of Facts and Conclusions of Law promulgated by the learned trial judge.

Government proposes to this Court that the only issue which could be litigated in this matter was whether or not, in fact, Christian Echoes owed the tax for which it sought a refund. It is incomprehensible to Christian Echoes that Government would argue that the IRS, or any other governmental agency, could disregard the rights guaranteed by the Fifth Amendment in determining whether

taxes are, in fact, due and then come before the Court asserting the violation of those constitutional rights is insignificant in the matter on trial.

The decision of the District Court, assuming this Court has jurisdiction of this appeal, which Christian Echoes denies, should be affirmed by this Court without further proceeding in this matter. The District Court found four valid legal reasons that Christian Echoes was wrongfully denied its tax exempt status by Government in 1966 and that it was due a refund from Government of the taxes assessed for the periods in question. All of the appealable issues have been presented to this Court by the Jurisdictional Statement of Government and Motions and Briefs of Christian Echoes and it is possible, and Christian Echoes proposes, that this Court affirm the decision of the District Court at this time.

CONCLUSION

Christian Echoes respectfully moves that this Court dismiss the instant appeal for the reason that the Court lacks jurisdiction at this time to hear the appeal or, in the alternative, that this Court affirm the decision entered in this matter by the United States District Court for the Northern District of Oklahoma.

Respectfully submitted,

LeROY BLACKSTOCK
CRAIG BLACKSTOCK
Attorneys for Appellee
Blackstock Joyce & Pollard
1304 Petroleum Club Building
Tulsa, Oklahoma 74119

Per Curiam

UNITED STATES v. CHRISTIAN ECHOES NATIONAL MINISTRY, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 71-565. Decided January 24, 1972

Appellee, a nonprofit religious corporation, brought this refund suit, claiming that it was entitled to tax-exempt status under § 501 (c) (3) of the 1954 Internal Revenue Code. The District Court held that under the facts adduced at trial appellee qualified for exemption. It went on, however, to conclude that the Internal Revenue Service (IRS) in revoking that exemption violated (1) free exercise requirements by analyzing each activity of appellee and classifying it as "religious" or "political," and (2) due process requirements by singling appellee out, among all other religious organizations, for investigation and exemption revocation without supporting evidence. *Held:* This Court has no jurisdiction to entertain the direct appeal that the Government seeks to take under 28 U. S. C. § 1252 from the District Court's decision, which did not hold § 501 (c) (3) unconstitutional as a whole or as applied, but was merely directed at the method and means by which the IRS enforced § 501 (c) (3) in this case.

Vacated and remanded.

PER CURIAM.

This case began when the Internal Revenue Service revoked the tax exempt status of the appellee, a nonprofit religious corporation. The appellee had previously enjoyed a tax exemption under § 501 (c) (3) of the 1954 Internal Revenue Code, 26 U. S. C. § 501 (c) (3). This section defines exempt organizations, in pertinent part, as:

> "Corporations . . . organized and operated exclusively for religious . . . purposes . . . , no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legisla-

tion, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

The appellee's exemption under this provision was revoked on three grounds: (1) that the appellee was not operated exclusively for religious purposes, (2) that it had engaged in substantial activity aimed at influencing legislation, and (3) that it had intervened in political campaigns on behalf of candidates for public office.

The appellee paid the taxes assertedly owed and then filed the present suit for a refund in Federal District Court, claiming that it was entitled to an exempt status under § 501 (c)(3) of the Code. The case was heard by a single District Judge sitting without a jury. The judge ultimately decided that the appellee was entitled to tax-exempt status and to a refund of the taxes paid.[1]

The District Court rejected all three grounds on which the Internal Revenue Service had revoked the appellee's exempt status. It found, as fact, (1) that the appellee's "activities have been directed toward achieving its religious goals," (2) that "[w]ith the exception of support of the proposed Becker Amendment to the United States Constitution relating to voluntary prayer and Bible reading in public schools, [the appellee] has not engaged in attempts to influence legislation," and (3) that the appellee "has not endorsed a political candidate, and has not instructed its followers as to how to vote but only to vote." On the basis of its findings of fact, the court concluded as law that the appellee fell within the terms of § 501 (c)(3). That ended the case. But the District Court nonetheless went on to discuss certain constitutional issues.

[1] The findings of fact and conclusions of law of the District Court in this case, entered on June 24, 1971, are not officially reported.

In its conclusions of law, the court stated that the First Amendment prohibits both the Government and the courts from determining whether a religious organization is operated for exclusively religious purposes, and thus eligible for tax-exempt status, by analyzing each and every activity of the organization and classifying it as "religious" or "political." In this case, the court said, the Internal Revenue Service conducted and relied upon such an analysis in revoking the appellee's exemption and, for that reason, the Service denied the free exercise of religion to the appellee. The District Court also stated that the Internal Revenue Service violated the appellee's right to due process of law by singling it out, among all other religious organizations, for investigation and exemption revocation "without evidence to support its action."

The United States seeks to appeal the decision of the single District Judge directly to this Court. It argues that we have jurisdiction under 28 U. S. C. § 1252. That jurisdictional provision allows a direct appeal to the Supreme Court from the decision of "any court of the United States . . . holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States . . . is a party." Such a direct appeal is allowed whether the Act of Congress was declared unconstitutional "as a whole" or simply "as applied" *Fleming* v. *Rhodes*, 331 U. S. 100, 102–103. The findings and conclusions of the District Court in the present case, however, reveal that it did not hold § 501 (c)(3) unconstitutional in either of these ways. Hence, we must dismiss this appeal for want of jurisdiction.

The "basis" of the District Court's decision, *United States* v. *Raines*, 362 U. S. 17, 20, was that, under the facts adduced at trial, the appellee qualified for exempt status under § 501 (c)(3). The court did not question or even consider the constitutionality of § 501 (c)(3) "as

a whole." Nor does any part of its opinion hold that the section was unconstitutional "as applied." Indeed, the court in this case would hardly have found the appellee to be qualified for an exemption under § 501 (c)(3), only to hold that the section could not be validly applied in the first place.

The District Court's commentary on the denial of due process to the appellee was directed simply to the *method* by which § 501 (c)(3) was enforced [2]—not to its basic applicability. The court held that the Internal Revenue Service may not discriminate in applying the section. This holding restricts freewheeling enforcement and may make it more difficult to revoke certain tax exemptions. But it does not call into question the validity of the underlying statute. Under § 1252, direct appeal to the Supreme Court is authorized only in the latter situation.

Similarly, the District Court's commentary on the denial of the appellee's First Amendment rights was directed to the particular interpretation given to § 501 (c)(3) by the Internal Revenue Service in this case, and to its means of enforcing that interpretation. At most, the court's reasoning on this point can be read to construe § 501 (c)(3) narrowly so as to avoid a First Amendment problem.[3] The court refused to interpret

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[2] By far the greatest portion of the District Court's findings of fact are directed to the detailed history of the Government's investigation of the appellee's exempt status.

[3] For example, the District Court stated:

"43. [The appellant] has characterized certain of [the appellee's] activities during the years involved in this suit as urging the public to contact members of legislative bodies for the purpose of proposing, supporting or opposing legislation. [The appellee] has characterized the same activities as taking stands on issues of the day concerning matters which it construes to threaten its religious beliefs. The Court finds that these activities have resulted from [the appellee's] religious beliefs and were merely incidental to the

and apply the section to require an analysis of the "religious" or "non-religious" character of every activity by a concededly religious organization, because such an interpretation and application would infringe the right to free exercise of religion. It stated that the Internal Revenue Service had already gone too far in its enforcement of this interpretation. But the statement that the *Service* violated the appellee's First Amendment rights is not the same as a holding that *Congress* did so in enacting § 501 (c)(3). The court avoided holding that the section itself was unconstitutional "as applied"—*i. e.*, that the section, by its own terms, infringed constitutional freedoms in the circumstances of the particular case. Rather, it held that the Service had misinterpreted § 501 (c)(3) and that the section must be narrowly construed.[4] Although the construction was

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exercise of its religion and the expression and dissemination of its understanding of biblical concepts. The Court further finds that any such activities by [the appellee] were insubstantial in relationship to the totality of [the appellee's] activities.

"44. [The appellant], in describing and characterizing [the appellee's] activities as political and non-religious, has in fact indicated a disagreement with the content and nature of what [the appellee] has said and written. [The appellant] has thereby sponsored its own definitions of 'religion' and 'religious.' Such definitions by [the appellant] are impermissable. . . .

"45. [The appellee's] expression of opinion on 'current issues or issues of the day' is not an act contemplated by prohibition against intervention in political campaigns or legislation and is not a violation of the provisions of Internal Revenue Code."

[4] A similar distinction has been drawn in the context of the three-judge district court statute, 28 U. S. C. § 2281. "It is necessary to distinguish between a petition for injunction on the ground of the unconstitutionality of a statute as applied, which requires a three-judge court, and a petition which seeks an injunction on the ground of the unconstitutionality of the result obtained by the use of a statute which is not attacked as unconstitutional. The latter petition does not require a three-judge court. In such a case the attack is aimed at an allegedly erroneous administrative action." *Ex parte Bransford*, 310 U. S. 354, 361.

based on a constitutional premise, it did not amount to a holding that an Act of Congress is unconstitutional, as contemplated by § 1252. To the contrary, the District Court construed the section so as to save its constitutionality.

Our interpretation of the District Court's conclusions of law does not, of course, indicate approval of those conclusions. The issue is not before us. We hold only that there is an absence of appellate jurisdiction under § 1252.

The judgment is vacated and the case remanded to the District Court for the entry of a fresh decree, so that the appellant may appeal to the United States Court of Appeals for the Tenth Circuit.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.